

# Court of Appeals, State of Michigan

## ORDER

People of MI v Daryle Anthony Stewart

Docket No. 259358

LC No. 90-003165

Christopher M. Murray  
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly  
Judges

The Court, on its own motion, orders that the trial court's order of May 6, 2005, is VACATED. The trial court lacks jurisdiction to restore defendant-appellant's appeal of right.

Pursuant to our Supreme Court's order of November 29, 2004, defendant-appellant has been granted leave to appeal with respect to the following issues: (1) whether appellate counsel abandoned defendant's direct appeal pursued by claim and by application; (2) assuming such abandonment, whether defendant was completely deprived of the right to an appeal and effective appellate counsel; and (3) assuming a deprivation of the right to appeal and appellate counsel, (a) whether the trial court's denials of defendant's subsequent pro se requests for counsel continued to deprive defendant of the right to appeal and effective appellate counsel; (b) whether such was structural error requiring that defendant be afforded an appeal of right; and (c) whether the trial court's denial of defendant's first pro se motion for relief from judgment in 1995 barred it, per MCR 6.508(D)(2), from granting any subsequent request for post-conviction relief to correct any deprivation of the right to appeal and effective appellate counsel.

The Court's prior remand order of December 20, 2004, directed that an evidentiary hearing be held because, in the Court's opinion, based upon review of defendant-appellant's application for leave to appeal to our Supreme Court, the issues on appeal could not be effectively reviewed without the testimony of appellate counsel Sequoia Dubose, and probably the defendant's mother, regarding the circumstances of counsel's retention and representation of defendant-appellant. The Court therefore directs the trial court and defendant-appellant's appointed counsel to conduct an evidentiary hearing to develop the factual record in this regard. The trial court shall conduct an evidentiary hearing within 21 days after the Clerk's certification of this order and cause a transcript of the hearing to be filed within 21 days after the hearing is concluded.

Defendant-appellant's appointed counsel shall file a brief on appeal addressing the above-referenced issues within 21 days after the transcript of the hearing is filed with the trial court clerk. The Court retains jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 23 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk